IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.596 of 2007

Thiyagu @ Paul Thiyagu .. Petitioner

Vs

1. State of Tamil Nadu,
   rep. by its Secretary to
   Government, Prohibition &
   Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.C.Chellappan
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the detenu, Thiyagu @ Paul Thiyagu, son of Manoharan, who was incarcerated by order dated 23.1.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 23.1.2007 in his Office Memo No.17/BDFGISSV/2007 against the petitioner, Thiyagu @ Paul Thiyagu, now

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

confined at Central Prison, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 23.1.2007 came to be passed based on the ground case said to have taken place on 8.1.2007 at 12.30 hours, on the basis of the complaint lodged by one Krishnan before the Inspector of Police, P.1 Pulianthope Police Station. On 8.1.2007, the detenu and his associates are alleged to have wrongfully restrained Krishnan and threatened him at knife point and enquired about his father's second's residence. As he did not give reply, the detenu and his associates beat him with hands. The complainant tried to escape from the place. At that time, the detenu and his associates attacked the complainant with knife. The complainant warded off the attack and sustained injury on his back. On the basis of the complaint, a case was registered in Cr.No.30/2007 of P1 Pulianthope Police Station under Sections 341, 323, 307, 427, 336 and 506(ii) IPC. The detenu was arrested on 8.1.2007 and was remanded to judicial custody. On being satisfied that the detenu has acted in a manner prejudicial to the maintenance of public order, the impugned detention order was clamped on him.

3. The learned Counsel for the petitioner though raised several points, we do not propose to go deep into those points, since in our view, the contention of the learned counsel as to non-application of mind must succeed. Drawing our attention to the booklet, learned Counsel for the petitioner has submitted that even though the FIR was earlier in point of time, wherein the accused persons are named, in the accident register, which is subsequent in point of time, the assailants are stated as 'unknown persons' and detaining authority has not chosen to clarify this discrepancy on vital aspect, which would vitiate the detention order.

4. With reference to the contention of the learned counsel for the petitioner, we have verified the records. By perusal of the affidavit, it is seen that FIR in Cr.No.30/2007 of P1 Pulianthope Police Station was registered on 8.1.2007 at 1.15 p.m. By reading of FIR at page 557 of the booklet, it is seen that the names of the accused is mentioned in the FIR. The injured complainant Krishnan was sent to the hospital for treatment along with police memo and he was examined in the hospital at 1.55 p.m. on the same day i.e. 8.1.2007. By a reading of the Accident Register at page 563 of the booklet, it is seen that in the Accident Register, the injured has alleged that he was assaulted by two unknown persons using knife. Such discrepancy on the vital aspect is apparent on the face of the record. The Detaining Authority has not applied its mind to this discrepancy nor clarified on this aspect. Naming the accused persons is a vital aspect and in our view, the Detaining Authority ought to have clarified on the material contradiction in the FIR and Accident Register.

5. In similar facts and circumstances of the case, in 2005 MLJ Crl. 1069 [Sekar @ Karadi Sekar v. Commissioner of Police, Greater Chennai, Chennai], names of the accused was mentioned in the FIR. But in the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Accident Register, mention is made about the assailants as "Two unknown persons". This Court has quashed the detention order on the ground that the discrepancy shows non application of mind by the Detaining Authority. The ratio of the said decision is squarely applicable to the case on hand.

6. For the foregoing reasons, the Habeas Corpus Petition is allowed and the impugned detention order is quashed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Secretary,
   State of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Chennai 8.

3. The Superintendent,
   Central Prison,
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai - 9.

WEB COPY

1 CC To Mr.C.C.Chellappan, Advocate, SR NO.52737.

H.C.P.No.596 of 2007

KA(CO)
RVL 03.09.2007

https://hcservices.ecourts.gov.in/hcservices/